

1 Decl. Ex. 2); see also A Fierce Battle Brews Over the Simplest Software Yet, Business Week, Nov. 21,
2 1983, at 114 (“windowing programs are expected to be standard on every personal computer”); Andrew
3 Pollack, Integrating the Software, N.Y. Times, Dec. 1, 1983, at D2 (“Window packages have been
4 dubbed environments.”); Microsoft Philosophy Presages Entry in Window Wars, InfoWorld, Nov. 14,
5 1983, at 56 (“Given the ammunition, can a Microsoft window manager be far away?”).

6 Advertisements, a key indication of how any industry communicates with its customers, also
7 commonly referred to products by identifying them as a “window manager,” “windowing environment”
8 or describing them as compatible with other window managers, such as Microsoft Windows. See, e.g.,
9 Boller Decl. Ex. 8, at MS 000770 (“DESQview. The Multitasking, Windowing Environment”); MS
10 000769 (“Unlike many other screen managers, C-scape is a true windowing environment.”); MS 000756
11 (“Runs under most window managers, e.g. . . . Dec Windows”); MS 000776 (“Only HDS’ X terminals
12 come with a built-in Open Look window manager.”).

13 Similarly, many dictionaries used these terms to describe a class of computer software products.
14 For example, Alan Freedman’s *The Computer Glossary* defines “Windows,” “windows environment”
15 and “windows program” as follows: “*Windows* is a windows program from Microsoft Corporation
16 A *windows environment* is a computer that is running under an operating system that provides multiple
17 windows on screen. [e.g.] Microsoft Windows A *windows program* is software that adds a
18 windows capability to an existing operating system.” Alan Freedman, *The Computer Glossary* 751-52
19 (4th ed. 1989) (Boller Decl. Ex. 4, at MS 000607-08). In another dictionary, “windows environment” is
20 defined as “[a] computing environment characterized by an operating system that allows multiple
21 windows on the display screen. Examples of such environments include DESQview, Microsoft
22 Windows, Presentation Manager, and X Window for the IBM, and Finder or MultiFinder for the
23 Macintosh.” Allen L. Wyatt, *Computer Professional’s Dictionary* 344 (1990) (Boller Decl. Ex. 4, at MS
24 000629).

25 Even Microsoft’s own computer dictionary includes expansive definitions of “windowing
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environment” and “windowing software”:

windowing environment An operating system or shell that presents the user with specially delineated areas of the screen called windows. Each window can act independently, as if it were a virtual display device. Windowing environments typically allow windows to be resized and moved around on the display. The Apple Macintosh Finder, Microsoft Windows, and the OS/2 Presentation Manager are all examples of windowing environments.

windowing software Programs, such as Microsoft Windows, that enable users to work with multiple on-screen windows. Windowing software acts as an intermediary between an operating system, such as MS-DOS, and application programs designed to work within a windowing environment. *See also* graphical user interface.

Microsoft Computer Dictionary 368 (1991) (Boller Decl. Ex. 4, at MS 000663); see also Microsoft Computer Dictionary 482 (4th ed. 1999) (Boller Decl. Ex. 5).

In addition to consistently coupling the company’s name with its various Windows versions, Microsoft also showed that it understood “windows” to denote a class of products by referring to its first Windows product as a “window manager.” In a 1983 article discussing the company’s introduction of Windows 1.0, the group manager for Microsoft Windows was quoted as saying, “[t]he window manager is actually a small part of this announcement.” Microsoft Does Windows, *supra*. Steve Ballmer, who was then the vice president for marketing, also described Windows using the same terms: “He [Steve Bulmer (sic)] said that after an extended internal debate about the philosophy of designing window managers, Microsoft had settled on” *Id.*

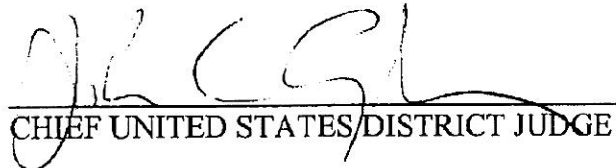
Finally, there is some evidence that Microsoft’s competitors also used the term “window manager” to refer to their system software or graphical user interface. See, e.g., Apple Computer, Inc. v. Microsoft Corp., 799 F. Supp. 1006, 1024 (N.D. Cal. 1992) (listing the “X Consortium Tab Window Manager” in the scènes à faire table); Microsoft Computer Dictionary 482 (4th ed. 1999) (“Macintosh Window Manager”); Kurt W.G. Mathies & Thom Hogan, Managing Multiple Windows, MacUser, June 1990, at 273 (“Macintosh Window Manager”).

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III. CONCLUSION

Applying the proper Ninth Circuit test for genericness and the Seventh Circuit's gloss regarding adjectives and other descriptive words that classify the noun to which they are attached in composite terms, the evidence shows that the consuming public used the terms "windows," "window" and "windowing" to refer to a type of graphical user interface or other software program, including operating systems, in which overlapping windows are the predominant visual feature. As a result, the Court did not err in either its legal or factual analysis when it denied Microsoft's motion for a preliminary injunction. The Motion for Reconsideration is DENIED.

SO ORDERED this 13 day of May, 2002.


CHIEF UNITED STATES DISTRICT JUDGE